

STATE GOVERNMENT

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Public Employees' Retirement Association (PERA)		
HB 10-1153 (Postponed Indefinitely) <i>PERA Board of Trustees</i>	HB 10-1207 (Postponed Indefinitely) <i>Modifications to PERA</i>	SB 10-001 (Enacted) <i>Eliminate PERA Unfunded Liability</i>
SB 10-146 (Enacted) <i>PERA Contribution Rates</i>		

During the 2010 legislative session, the General Assembly considered a number of bills that impact state government, including bills addressing state government operations and efficiency, the management of state government digital information, and the funding and structure of pension benefits in the Public Employees' Retirement Association.

State Government Organization and Operations

The General Assembly considered legislation moving certain state regulatory functions to new agencies, including a transfer of oversight of the Motor Carrier Safety Assistance Program from the Ports of Entry Section of the Department of Revenue to the Colorado State Patrol, and relocation of the regulation of games of chance to the Department of Revenue. In addition, the General Assembly adopted legislation that would have placed new restrictions on the use of state vehicles for commuting; however, the bill was vetoed by the Governor.

House Bill 10-1113 transfers the Motor Carrier Safety Assistance Program from the Ports of Entry Section in the Department of Revenue (DOR) to the Colorado State Patrol (CSP) in the Department of Public Safety (DPS) as of August 15, 2010.

The bill also addresses the operation of the ports of entry and delineates certain enforcement actions between the DOR and the DPS. Specifically, ports of entry personnel may enforce the prohibition on the use of dyed fuels, but may not enforce minimum standards for commercial vehicles. Only CSP personnel are permitted to inspect vehicles carrying nuclear materials, or investigate violations related to their transport. In addition, the DOR, DPS, and Colorado Department of Transportation (CDOT) are required to request proposals for a performance study of the ports of entry from private vendors. Subject to available appropriations, the performance study will assess the operations, potential cost savings or efficiencies, and which department should operate the ports of entry. If a study is completed, the selected vendor is directed to provide a report of its findings to the transportation committees of the General Assembly by June 1, 2011.

Senate Bill 10-141 designates the Department of Revenue (DOR) as the licensing and enforcement authority for games of chance, such as bingo and raffles. All existing staff, resources, and funds in the Department of State (DOS) relating to these functions are transferred to the DOR on July 1, 2011. The bill is conditional upon voter approval of House Concurrent Resolution 09-1003 (Amendment P). HCR 09-1003 referred a proposed constitutional amendment to the voters at the 2010 general election giving the General Assembly authority to determine which agency regulates bingo and raffles.

Under current Colorado law, a state agency may assign a state-owned vehicle to an employee or officer for commuting to promote state interests or create cost savings. **House Bill 10-1287**, which was vetoed by the Governor, would have placed additional restrictions on the use of state-owned motor vehicles for commuting. House Bill 10-1287 would have:

- required the need for an employee to commute with a state-owned motor vehicle to be set forth in the position description questionnaire for the employee's position;
- prohibited an employee from using a state-owned motor vehicle for commuting beginning October 1, 2010, unless the Division of Central Services in the Department of Personnel and Administration approved the use as consistent with the criteria for commuting authorization;
- required employees to reimburse the state for commuting with a state-owned motor vehicle at a rate that is established annually based on the federal commuting valuation rule or a lease-value methodology established by the division;
- exempted certain employees from the reimbursement requirement;
- required certain employees to allow reimbursement to be deducted from his or her salary;
- required reimbursement payments to be credited to the newly created State-owned Motor Vehicle Commuter Cash Fund;
- required moneys in the fund to offset the appropriation to a state agency or other funding for operating expenses for a state-owned motor vehicle; and
- required the division to annually provide the Joint Budget Committee with a report regarding the use of state-owned motor vehicles for commuting.

Governmental Efficiency/Cost Savings/Transparency

Senate Bill 10-029, which was postponed indefinitely, would have created efficiencies and cost savings in state and local government by:

Changes relating to personnel.

- implementing a two-year statewide hiring freeze and requiring the Governor to approve all new hires. Under the bill, only employees critical to protecting the life, health, or safety of Colorado residents could be hired;
- eliminating all bonuses paid to any state employee for two years;
- reducing to FY 2005-06 appropriation levels the personnel budget of the Governor's office, executive directors' offices, and the offices of the directors within principal state departments;
- reducing by 3 percent the number of all full-time equivalent state employees paid in whole or in part with General Fund dollars within five years;
- limiting the Governor's Energy Office to spending no more than 10 percent of its total budget on personnel;
- requiring the Governor to reduce by 10 percent the pay of all full-time equivalent state employees earning \$125,000 or more annually, except employees of state institutions of higher education;

Administrative changes.

- eliminating all duties of the office of the Executive Director of the Department of Local Affairs and directing those duties and appropriations to the Lieutenant Governor;
- requiring the Governor to report in writing to the General Assembly by April 1, 2010, regarding the consolidation of existing state boards and commissions;
- authorizing the Governor to repeal the Colorado Commission on Higher Education (CCHE) and to transfer any necessary CCHE responsibilities and appropriations to the Office of the Lieutenant Governor;
- requiring the Governor to report in writing to the General Assembly by April 1, 2010, regarding which agencies and departments perform similar or redundant functions and should be consolidated;
- requiring the State Board of Education to strongly encourage school districts to create boards of cooperative services where feasible for the purpose of enabling two or more school districts to cooperate in furnishing services authorized by law and for consolidating central administrative services;
- requiring the State Controller to transfer from the General Fund to the newly created General Fund Overflow Reserve Fund an amount equivalent to the total General Fund moneys appropriated in all bills that are vetoed by the Governor, including any General Fund line item appropriation in the Long Bill that is vetoed by the Governor; and
- removing the requirement that motor vehicles have a front license plate.

Senate Bill 10-164, which was postponed indefinitely, would have created two 12-member task forces to study the functions and organization of state government. The bill required the Legislative Audit Committee (LAC) to select members of a LAC Task Force and the Committee on Legal Services (COLS) to select members of the COLS Task Force. These bipartisan task forces were to be appointed by July 1, 2010, and to report findings to the LAC and COLS by August 5, 2011. After receiving the recommendations of the task forces, the LAC and COLS would have been authorized to recommend the introduction of legislation as deemed appropriate.

The bill charged the LAC Task Force with determining the core functions of state government and whether certain functions could be better managed by the state or by the private or

nonprofit sectors. The bill also charged the LAC Task Force to identify which state government functions could be eliminated, which state programs are redundant and could be streamlined, how the number of state salaried employees could be reduced through attrition, and how waste, fraud and abuse of governmental services could be eliminated. The bill charged the COLS Task Force with examining the state's regulatory system. Under the bill, the COLS Task Force was to determine whether the current regulatory system favors one segment of an industry over another, whether economic conditions warrant a reduction in regulation to reduce industry compliance costs, and whether the regulatory system is duplicative, outmoded, or unnecessary.

House Bill 10-1176 requires the Office of the State Controller to contract for recovery audits of state executive agencies (other than institutions of higher education) that spend more than \$25 million annually. The audits will determine whether overpayments to individuals, vendors, and others occur as a result of pricing errors, neglected rebates, discounts, unclaimed refunds, or other errors. The bill allows the State Controller to retain a portion of any recovered funds to defray administrative costs. The bill requires the State Controller to promulgate appropriate rules for conducting the audits and to report to the Office of the State Auditor, Legislative Audit Committee, and Joint Budget Committee regarding any exemptions of state agencies from the recovery audit process. The State Controller is also required to provide a written report to the General Assembly summarizing the results of the recovery audits by June 30, 2012.

House Bill 10-1264 creates an incentive program for employees who suggest state agency improvements that lead to cost savings. The bill requires the state personnel director to create an idea application by which eligible employees may suggest cost savings in their agencies, and evaluation criteria for the program no later than October 1, 2010. Certain budgetary, legislative, and higher education employees, departmental executive staff, and employees of the Department of Personnel and Administration are not eligible to participate in the program.

Eligible employees are required to submit idea applications to their agency's executive director who will then approve or deny the application within 60 business days, and calculates the resulting savings 13 months following implementation of the idea. The employee suggesting the idea is eligible for 5 percent, up to \$5,000, of the resulting savings, while the state agency directly affected by the idea application is awarded 25 percent of the savings, up to \$25,000. The remaining funds will be credited to the General Fund, with certain exceptions made for programs that are state enterprises, or that are funded by federal monies, gifts, grants, awards, or donations. Any savings realized by the Department of Transportation will be transferred to the State Highway Fund to pay the material costs of road and bridge repairs.

House Bill 10-1219, which was postponed indefinitely, would have authorized the Department of Corrections (DOC) to sell a correctional facility that totals 956 beds. In addition, the bill would have removed the requirement that the DOC may only place inmates who are classified as medium custody and below in a private contract prison. **House Bill 10-1421**, which was also postponed indefinitely, would have required the DOC to close by November 1, 2010, one state-run correctional facility that has a bed capacity of at least 500. Under the bill, the DOC would have been required to direct 20 percent of the savings realized in FY 2010-11 to the private prison per diem rate for programs that reduce recidivism.

Finally, **Senate Bill 10-114**, which was postponed indefinitely, would have extended the Colorado Open Records Act to apply to documents kept by private entities that receive public moneys or perform a governmental or public function. Under the bill, any contract for the

performance of a governmental or public function, and performance measures included in such a contract, would also have been open for public inspection. The requirements of the bill would have applied only to records and contracts that concern the receipt of public moneys or the performance of public functions.

Information Technology

During the 2010 legislative session, the General Assembly considered several bills relating to the management of digital information by state agencies and public access to such data.

Government Data Advisory Board. The Government Data Advisory Board is created within the Governor's Office of Information Technology (OIT). Current law requires that the Governor appoint four members of the advisory board, including a member of a school district board of education, and three board members with expertise in data sharing and information technology, including an employee of a city or county, a school district employee, and a higher education employee or a non-governmental organization employee. The state's chief information officer serves as chair and as an ex-officio member of the advisory board. The remainder of the board is composed of representatives of certain state departments who are experts in information technology or responsible for data administration.

Colorado law charges the advisory board to advise the chief information officer regarding the sharing and protection of data in state government. The advisory board also recommends rules and procedures for state agencies in handling requests for data from other state agencies or entities outside of state government, and the fees to be assessed for access to the data.

House Bill 10-1392 allows the Chief Information Officer to expand the membership of the advisory board, with the new members to be chosen as follows:

- the Governor may direct an executive director of one or more departments that are not otherwise specified in statute to choose a representative for whom the qualification requirements are removed, or a member from one or more political subdivisions;
- the Secretary of State, Attorney General, and State Treasurer may select a representative of his or her department;
- the Chief Justice of the Supreme Court may select a member of the Judicial Branch; and
- the Speaker of the House of Representatives and the President of the Senate may jointly select a representative from the legislative branch.

Transparency Online Project. In 2009, the Governor issued an executive order creating the Transparency Online Project (TOP), a website giving Colorado taxpayers easy access to the details of state finances, revenue and expenditures. The website, created by OIT, and administered by the state controller, provides data from the state's accounting system. Colorado law formerly gave the State Controller the authority to publish state financial data as aggregated totals, rather than as individual transactions, if presenting the information in such a manner fostered the goal of accountability and transparency. **House Bill 10-1393** limits the state controller's ability to present data on the TOP website as aggregated totals and creates a process for excluding protected information.

Specifically, the bill requires OIT to make changes to the TOP website to show more detailed information on state expenditures contained in the state's financial data system. Exceptions are made for publishing confidential information, and state agencies may request that certain information not be disclosed on the TOP website. The bill also creates a process for members of the public to challenge the exclusion of data by a state agency, including action in state district court. When specific expenditure data is excluded, the TOP website must explain the exclusion and provide aggregated expenditure data.

State agency information management. House Bill 10-1401 addresses the management of information in state agencies. The bill defines "collaboration, office productivity, and electronic mail solution" or "COPE" as software that is delivered via a SaaS model and offered as a specific service by the Statewide Internet Portal Authority (SIPA) or any private sector provider of information technology resources. "Software as a service" or "SaaS" is defined as a model of software development via the Internet that:

- allows a customer to use the SaaS on demand through a subscription or a pay-as-you-go model;
- does not require the user to purchase hardware or software directly to run an information technology application; and
- may be utilized for various information technology applications including, but not limited to electronic mail, video conferencing, instant messaging, office productivity applications, and electronic calendaring.

The bill requires that if the OIT initiates any COPE in a state agency on or after January 1, 2010, through an agreement with the SIPA or any private sector provider, it must file a report with the Joint Budget Committee (JBC) and the Legislative Audit Committee (LAC) no later than 30 days after the last day of the fiscal quarter in which the COPE was initiated. The report must include:

- an implementation plan for the COPE in the state agency that includes the estimated completion date for such implementation;
- a cost-benefit analysis for implementing the COPE showing the cost savings to the state agency from that implementation; and
- an analysis demonstrating that implementation of the COPE is in conformance with the agency's information security plan.

Following the first report, the OIT must thereafter file quarterly reports with the JBC for two years containing information on the progress of the implementation of COPE services in the state agency and the cost savings from that implementation. These reporting requirements are repealed on July 1, 2014.

The bill requires each state agency that imposes charges or fees for accessing electronic information, products, or services through the statewide internet portal to provide a report to the executive director of the SIPA on the total amount of the charges or fees imposed in the preceding fiscal year. By November 1 of each year, the SIPA board is directed to report to the House Business Affairs and Labor Committee and the Senate Business, Labor, and Technology Committee and to the JBC regarding the:

- total amount of charges or fees imposed by each state agency for accessing electronic information, products, and services through the statewide internet portal made in the preceding fiscal year; and
- total amount of receipts and revenue derived by the SIPA from those transactions through the portal for the preceding fiscal year.

Under the bill, if a financial audit of the SIPA is conducted by an independent certified public accountant, any statements, records, schedules, working papers, and memoranda prepared by the accountant must be made available to the State Auditor's Office and kept confidential unless a majority of the LAC vote to open the documents. Finally, the bill permits the State Auditor to conduct performance audits of the SIPA.

Public Employees' Retirement Association (PERA)

The General Assembly enacted legislation to improve the actuarial funded status of the Public Employees' Retirement Association trust funds by adjusting employer and employee pension contributions, changing future retirement eligibility criteria, and reducing benefits owed to current PERA retirees. Also considered were bills to alter the makeup of the PERA board of trustees, and to close the PERA defined benefit plan and establish a new PERA defined contribution plan. Finally, the General Assembly enacted legislation shifting responsibility for a portion of PERA-employers (PERA state and judicial divisions) pension contributions to employees of those divisions.

Senate Bill 10-001 modifies employee and employer contributions and retiree benefits to attempt to bring the PERA trust funds to a 100 percent funded ratio within 30 years. The bill modifies calculation of, and eligibility for, future retirement benefits that will be received by current nonvested workers and creates new contributions and guidelines for working retirees. The bill also eliminates the current statutory, automatic 3.5 percent retiree annual benefit increase, also known as the cost-of-living adjustment (COLA), and replaces the fixed annual benefit increase with a variable annual benefit increase.

To assist in the reduction of the unfunded liability of PERA's trust funds, current law requires additional contributions from PERA employers called the "amortization equalization disbursement (AED)" and the "supplemental amortization equalization disbursement (SAED)." The SAED contributions are paid from funds that would otherwise be used for salary increases for employees of PERA member employers. Prior to the enactment of Senate Bill 10-001, the AED and SAED were each scheduled to gradually increase to a total of 3 percent of salary, totaling an additional contribution of 6 percent of salary in 2013.

Employer contributions. In regard to employer contributions, the bill:

- extends AED increases for employers in the state division by 0.4 percent per year between 2013 and 2017, for an additional 2 percent of total payroll by 2017;
- extends AED increases for employers in the school and Denver Public Schools (DPS) divisions by 0.4 percent per year between 2013 and 2015, and 0.3 percent in 2016, for an additional 1.5 percent of total payroll by 2016;
- freezes AED increases for employers in the local government and judicial divisions at the 2010 rate of 2.2 percent of total payroll;

- sets parameters for adjusting the AED contribution of a division based on its actuarial funded ratio; and
- eliminates scheduled increases in the employer contribution rate for employers in the school and DPS divisions.

Employee contributions. In regard to employee contributions, the bill:

- extends supplemental amortization equalization disbursement (SAED) increases for the state division by 0.5 percent per year between 2014 and 2017, for an additional 2 percent of total payroll by 2017;
- extends SAED increases for the school and DPS divisions by 0.5 percent per year between 2014 and 2018, for an additional 2.5 percent of total payroll by 2018;
- freezes SAED increases for the local government and judicial divisions at the 2010 rate of 1.5 percent of the employer's total payroll; and
- sets parameters for adjusting the SAED contribution of a division based on its actuarial funded ratio.

Annual cost-of-living adjustments for retirees. In regard to annual cost-of-living adjustments, the bill:

- reduces the statutorily fixed retiree COLA (which is currently 3.5 percent, or the lesser of 3 percent or inflation depending on date of hire of the PERA member) to the lesser of 2 percent or inflation for 2010, and requires the inflation calculation to be based on periods in 2009, resulting in no COLA in 2010;
- limits the COLA to 2 percent in 2011 and future years, unless PERA experiences a negative investment return, in which case the COLA will be calculated as the lesser of inflation from the preceding three years or 2 percent;
- provides for COLA adjustments to be made with the July benefit, and requires persons retiring after January 1, 2011, to receive benefits for at least 12 months before receiving a COLA adjustment; and
- sets parameters for adjusting the COLA based on PERA's actuarial funded ratio.

Changes in benefit eligibility and calculations. Retirement benefits under PERA's defined benefit plan are based on a PERA member's age, years of service, and "highest average salary" (HAS). A member's HAS is calculated as an average of the member's highest annual salaries associated with three consecutive 12-month periods. The bill:

- imposes an 8 percent cap on the amount of salary increase from each year to the next (spiking limit) that will be counted toward calculation of the HAS;
- specifies the conditions for receiving a 50 percent employer matching contribution for members who receive a refund of their PERA account;
- creates new age and years-of-service requirements for members to retire with a full benefit based on their date of hire, including the "rule of 88" and the "rule of 90" (age plus years of service); and
- requires PERA to provide written notice to current and inactive members about the possibility of a future actuarial necessity, and that the General Assembly can modify the benefits allowed to members in the defined benefit plan.

Changes for working retirees. In regard to retirees who return to work for a PERA employer the bill:

- requires such a retiree to make a contribution to PERA at the same rate as the member contribution rate for that employer;
- specifies that working retiree contributions are not credited to the retiree's member contribution account;
- specifies conditions where increases in work limits are allowed for certain retirees;
- prevents working retirees who suspend their retirement benefit and return to work for a PERA employer from adding to their service credit, and requires that each period of service for a PERA employer following retirement be calculated as a separate benefit segment under the benefit structure in place at the time of retirement; and
- clarifies how new benefit segments are calculated and paid.

The bill also requires the PERA board of trustees to calculate the actuarial funding status of PERA as a whole prior to calculating the funding status of a division separately, and to submit a report concerning the plan's funding status to the General Assembly on January 1, 2016, and every five years thereafter.

Senate Bill 10-146 makes a one-year 2.5 percent reduction in the state's PERA contribution for the state and judicial divisions and offsets the reduction by increasing the employee contribution rate for employees in those PERA divisions by 2.5 percent. For FY 2010-11, salary-based PERA contribution rates will change as follows. Under the bill, state troopers will increase their member contribution rate from 10 to 12.5 percent, while the employer contribution rate will decrease from 12.85 to 10.35 percent. All other state division employees will increase their member contribution rate from 8 to 10.5 percent, while the employer contribution rate will decrease from 10.15 to 7.65 percent. All judicial division employees will increase their member contribution rate from 8 to 10.5 percent, while the judicial division employer contribution rate will decrease from 13.66 to 11.16 percent.

House Bill 10-1153, which was postponed indefinitely, would have altered the makeup of the 15-member PERA Board of Trustees to create a majority of trustees who are non-PERA members, and who have experience in certain fields. The bill would have allowed current trustees to finish serving their terms and reduced the number of trustees who represent each of the PERA divisions and retirees as their terms expire until the board was composed of:

- eight trustees appointed by the Governor and confirmed by the Senate who were not PERA members or retirees and had significant experience and competence in investment management, finance, banking, economics, accounting, pension administration or actuarial analysis;
- the State Treasurer;
- two members of and elected by the school division;
- one member of and elected by each of the state, local government, and judicial divisions; and
- one elected retiree.

The bill did not eliminate the ex officio trustee from the Denver Public Schools Division. The bill specified that no more than four appointed trustees could be of the same political party.

House Bill 10-1207, which was postponed indefinitely, would have modified contributions to and benefits paid by PERA. Among other things, it would have eliminated new enrollment in the existing PERA defined benefit plan as of January 1, 2011.

In regard to employer contributions, the bill would have repealed the AED as of January 1, 2011; and modified contribution rates beginning on January 1, 2011, so that employers contribute 10 percent of each employee's salary, and any increase in this rate would be matched by a corresponding increase in the employee contribution rate.

In regard to employee contributions, the bill would have repealed the SAED as of January 1, 2011; and modified contribution rates beginning on January 1, 2011, so that each employee contributes 10 percent of their salary, and any increase in the employer's contribution rate would be matched with an equal employee rate increase.

Further, the bill would have allowed the General Assembly to increase the COLA percentage for members within a specific division if that division's trust funds are funded at or above 90 percent. Finally, the bill would have established a new defined contribution (DC) plan, and required the transfer of all existing DC plan members and enrollment of new employees into the plan as of January 1, 2011. Members of the new plan would have been allowed to opt to reduce the employee and employer contribution levels, make investment decisions, and rollover contributions from other plans into the DC plan.